

REMARKS

The Examiner has rejected claims 7 and 9 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 4,924,378 to Hershey et al. The Examiner has further rejected claims 4 and 5 (and arguably claim 6) under 35 U.S.C. 103(a) as being unpatentable over Hershey et al. in view of U.S. Patent 5,659,617 to Fischer. In addition, the Examiner has rejected claim 10 under 35 U.S.C. 103(a) as being unpatentable over Hershey et al. in view of U.S. Patent 6,496,802 to van Zoest et al. Applicant notes that the Examiner has not addressed claim 8, and as such, presumes that claim 8 has been deemed allowable.

The Hershey et al. patent discloses a license management system and license storage key in which an application program to be run on a computer must be assigned a license in the license storage key associated with the computer before it is permitted to run. In particular, the computer on which the application program is to be run, requests a license for the application program. The license storage key then searches for the appropriate license and responds to the computer when the license is found. As indicated at col. 5, lines 27-36, the computer includes a timer for enabling the computer to keep track of responses for which it is waiting. If a response is not received within the time set by the timer, then an error is sent to the computer.

The subject invention relates to, for example, a system for confirming which a user is authorized to playback a track that is found on a CD which contains a plurality of tracks. If the user is in possession of the CD, then other tracks should be available for the verifier to check. If the user is not in possession of the CD, then the other tracks are not available. Alternatively, the user may attempt to "trick" the system by downloading the other requested tracks. This would then be detected by the system due to the additional time required to search for, locate and download the other requested tracks as opposed to the tracks merely being accessed on the CD.

The subject invention, as claimed in claim 7, includes "a renderer for receiving a plurality of data items corresponding to a data set, and for producing therefrom a rendering corresponding to a selected data item", "a verifier, operably coupled to the renderer, for precluding the rendering corresponding to the selected data item in dependence upon whether other data items of the plurality of data items are available to the renderer", "a timer, operably coupled to the verifier and the renderer, for measuring response times associated with responses to requests for the other data items from the renderer", and "wherein the verifier precludes the rendering based at least in part on an assessment of the response times".

As noted in MPEP 2131, it is well-founded that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Further, "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

The Examiner indicates that the "renderer" as claimed in claim 7 is found in Hershey et al. in the abstract, lines 5-12, col. 1, lines 20-27, and col. 3, lines 22-29, i.e., the Examiner believes that the license storage key of Hershey et al. is equivalent to the "renderer" as claimed; that the "verifier" as claimed in claim 7 is found in Hershey et al. at col. 3, lines 40-64,, col. 4, lines 25-30, col. 5, lines 2-3, 8-11, 19, col. 6, lines 50-67; col. 7, lines 1-20, i.e., the Examiner believes that the microprocessor in the license storage key is equivalent to the "verifier" as claimed; and that the "timer" as claimed in claim 7 is found in Hershey et al. at col. 5, lines 27-36.

Applicant submits that the Examiner is mistaken at least with regard to the "renderer" and the "verifier". In particular, the renderer as claimed receives a plurality of data items corresponding to a data set, and renders a selected data item among the plurality of data items. The license storage key of Hershey et al. merely stores a plurality of licenses and searches these licenses upon a request from a computer terminal connected thereto. Applicant submits that the license storage key of Hershey et al. does not receive a plurality of data items corresponding to a data set, and does not render a selected data item. Further, the microprocessor in the license storage key does not "preclude the rendering corresponding to the select data item in dependence upon whether other data items of the plurality of data items are available to the renderer". Applicant submits that there is nothing in the license storage key that corresponds to the "select data item" and the "other data items", both being part of the plurality of data items available to the renderer. Applicant submits that the microprocessor of the license storage key merely searches the memory of the license storage key for a particular license requested by a computer terminal attached to the license storage key.

Further, with regard to the verifier, as noted above, claim 7 claims "a verifier, operably coupled to the renderer, for precluding the rendering corresponding to the selected data item in

dependence upon whether other data items of the plurality of data items are available to the renderer". Applicant submits that while Hershey et al. has means for verifying the data in a request received over the mouse receive line, there is no correspondence with the verifier of the subject invention. In particular, if the stored licenses are the plurality of data items in the data set, and, a particular license authorization (selected data item) is requested, the rendering of the selected data item is not contingent on the availability of other license authorizations (other data items) in the data set. Similarly, if the requests on the mouse line are the plurality of data items in the data set, the rendering of a particular request is not contingent on the availability to the storage key of other requests in the data set.

Applicant cautions the Examiner to avoid "mixing apples with oranges", in that the data items, plurality of data items and data set identified with regard to the renderer, are the same data items, plurality of data items and data set identified with regard to the verifier.

In the subject invention, upon receipt of a request for the rendering of a selected data item in the data set, the renderer requests other data items of the plurality of data items in the data set. The timer of the processing system then measures the response time associated with the requests of the renderer, and the verifier precludes the rendering of the selected data item based on

the response time for the other data items requested by the renderer.

The timer disclosed in Hershey et al. relates to a timer in the work station which times the response time of the storage key to a request from the work station to the storage key for a license authorization.

Applicant submits that while a timer is disclosed in Hershey et al., this timer does not measure the response time as claimed in claim 7.

The Fischer patent discloses a method for providing location certificates which "uses unique location certificates to track goods and wares during shipment, establish the location of participants in a network, determine the location at which a digital signature was performed, ascertain the validity of objects which have expected or mandated to be present within certain geographic bounds and control the use of security or sensitive devices by limiting their operation to certain locations."

The Examiner now states that it would have been obvious to combine Fischer's ideas of using a unique location certificates to establish the location of participants in a network with Hershey's system in order to control the use of security or sensitive devices.

Applicant submit that while Fischer may be combined with Hershey et al., this is irrelevant with regard to the claimed

invention. In particular, in the subject invention, a timer measures the response times associated with the one or more responses to the one or more requests of the verifier, the verifier determines the authorization based at least in part on an assessment of the response times, and that the response times are correlated to a physical proximity between a first source of the one or more requests and a second source of the one or more responses. This means that if the response times are greater than a predetermined amount, the second source is located more than a predetermined physical distance from the first source.

The van Zoest et al. patent discloses a system and method for providing access to electronic works, in which, in one embodiment, a ripper 215 randomly extracts portions or "samples" of the raw data from each track on the CD, these samples being identified randomly, for verifying the authorization of the user.

Claim 10, which depends from claim 7, states "the verifier is configured to randomly select the other data items".

While van Zoest et al. arguably shows the random selection of samples, Applicant submits that there would be no incentive for combining this feature with Hershey et al. in that the object of the license storage key in Hershey et al. is to provide the requested license, not a randomly selected license.


As noted in MPEP 2143.01, "Obviousness can only be established by combining or modifying the teachings of the prior

art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

In view of the above, Applicant believes that the subject invention, as claimed, is neither anticipated nor rendered obvious by the prior art, either individually or collectively, and as such, is patentable thereover.

Applicant believes that this application, containing claims 4-10, is now in condition for allowance and such action is respectfully requested.

Respectfully submitted,

by 
Edward W. Goodman, Reg. 28,613
Attorney
Tel.: 914-333-9611